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Attorneys for Defendant Caterpillar Inc.  
(erroneously served and sued as Caterpillar, Inc.)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

NINILCHIK CHARTERS, LLC,

Plaintiff,

vs.

CATERPILLAR, INC., a Delaware  
corporation,

Defendant.

Case No. 3:04-cv-250 (TMB)

**AFFIDAVIT OF DANIEL W. BIR**

Affidavit of Daniel W. Bir  
*Ninilchik Charters, LLC v. Caterpillar Inc.*  
Case No. 3:04-cv-250 (TMB)  
(8367-2/244801)

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

ss.

I, DANIEL W. BIR, affirm as follows:

1. I am an attorney duly licensed to practice in all the courts of the State of California and in the United States District Courts for the Eastern, Central, and Southern Districts of California. I have been admitted *pro hac vice* to appear before this Court in the matter of *Ninilchik Charters, LLC v. Caterpillar Inc.*, Case No. 3:04-cv-250 (TMB). I am an associate at the firm of Sedgwick, Detert, Moran & Arnold, counsel of record for Defendant Caterpillar Inc. in the above-referenced matter. I have personal knowledge of the facts and circumstances set forth in this Affidavit, and, if called upon as a witness to testify, I could and would competently testify as to the matters set forth in this Affidavit.

2. Based on the service of pleadings in this matter, plaintiff filed his First Amended Complaint on or about August 13, 2004. A true and correct copy of the First Amended Complaint is attached hereto as Exhibit "A."

3. Based on the service of discovery in this matter, plaintiff served their Responses to Caterpillar Inc.'s First Set of Special Interrogatories on or about May 20, 2005. A true and correct copy of plaintiff's Responses is attached hereto as Exhibit "B."

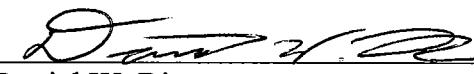
4. On November 10, 2005, I attended the deposition of Eldon Summers in connection with the subject lawsuit in Anchorage, Alaska. True and correct copies of the relevant portions of Mr. Summer's deposition testimony is attached hereto as Exhibit

“C.”

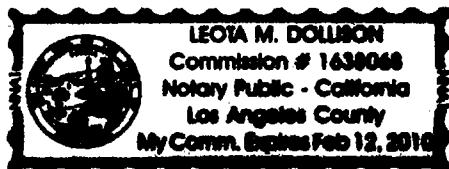
5. On November 9, 2005, I attended the deposition of plaintiff Ninilchik Charters, LLC's owner, Michael Flores, in connection with the subject lawsuit in Anchorage, Alaska. True and correct copies of the relevant portions of Mr. Summer's deposition testimony is attached hereto as Exhibit “D.”

I affirm under penalty of perjury, under the laws of the State of Alaska, that the foregoing is true and correct.

This Affidavit was executed this 31 day of March, 2006, at Los Angeles, California.

  
Daniel W. Bir

SUBSCRIBED AND SWORN to before me this 31<sup>st</sup> day of MARCH, 2006.



  
NOTARY PUBLIC in and for the State of California  
My Commission Expires: FEB. 12, 2010

Certificate of Service

I hereby certify that on April 7, 2006, a copy of the foregoing Affidavit of Daniel W. Bir was served electronically on:

Leonard R. Anderson  
Davis, Randall, Anderson, & Mathis, PC  
405 W. 36th Avenue, Suite 200  
Anchorage, AK 99503-5872

s/ Frank A. Pfiffner